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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): ITL.0405US (P8988)

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on February 13, 2006

Signature /Nancy Meshkoff/

Typed or printed name Nancy Meshkoff

Application Number	Filed
09/841,657	April 24, 2001

First Named Inventor: Duncan M. Kitchin

Art Unit	Examiner
2663	Chi Ho A. Lee

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 28,994
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

/Timothy N. Trop/
Signature
Timothy N. Trop
Typed or printed name

(713) 468-8880
Telephone number

February 13, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of _ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant: Duncan M. Kitchin	§	Art Unit:	2663
Serial No.: 09/841,657	§	Examiner:	Chi Ho A. Lee
Filed: April 24, 2001	§	Docket:	ITL.0405US P8988
For: Managing Bandwidth in Network Supporting Variable Bit Rate	§	Assignee:	Intel Corporation

Mail Stop **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT IN SUPPORT OF A PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

A pre-appeal review is requested because the Office action interprets the reference in a way which cannot be sustained.

Namely, the claims call for a controller to detect a bit rate change event. A first portion of the data is transmitted using a reserved bandwidth in response to the event and a second portion of the data is transmitted using an unreserved bandwidth in response to detecting the bit change event.

In other words, when the bit rate change event occurs, some data goes on a reserved bandwidth and some goes on an unreserved bandwidth.

Date of Deposit: February 13, 2006
I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Nancy Meshkoff

The Office action suggests that step 516 in Figure 5 of the Newberg reference teaches determining when additional bandwidth is required at a mobile. This the examiner contends is a bit rate change event.

The problem is that, even if we were to accept that argument for present purposes only, the claim still requires that a first portion of the data be transmitted using a reserved bandwidth and a second portion be transmitted using an unreserved bandwidth. Nowhere does the reference ever indicate that a second portion of the data is transmitted on an unreserved bandwidth in response to the detection of bit rate change event.

Firstly, it should be noted that the examiner relies on a new bandwidth request 518 and suggests that somehow this teaches determining whether additional unreserved bandwidth is required. However, the request 518 is explained in column 7, lines 17 *et seq.* It is clear that the request 518 is a request from an additional application (see Column 7, lines 19-20) not a bit rate change in the same application that was previously the subject of a reserved bandwidth. Thus the reliance on step 518 is unavailing because (1) it does not teach any unreserved bandwidth, and (2) it relates to a different application, not the application which was already subject to the alleged bit rate change.

Moreover, the reference actually explains the step 516 although it never actually refers to the step 516 in the drawing. Namely, in column 7, lines 5-16 it is explained that the communication system continually assesses the traffic and channel requirements 500 and that it keeps account of the actual slots per second used by the application. This reflects the actual channel utilization of the application. The actual channel utilization is compared with the predicted channel bandwidth that is allocated or reserved. This is done "to determine if an adjustment should be made to the bandwidth allocation". Thus the language "bandwidth allocation" suggests that if something changes, new bandwidth is allocated. This is the opposite of suggesting applying an unreserved bandwidth as set forth, for example, in claim 1.

Therefore the reference cited under § 102 explicitly teaches away or teaches the opposite of what is claimed. Therefore the rejection cannot be sustained.

Corresponding limitations may be found in claim 10 and claim 18.

Reconsideration is not requested with respect to claims 24-30.

Respectfully submitted,

Date: February 13, 2006

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